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### **REMARKS/ARGUMENTS**

Claims 3, 4 and 7-12 now stand in the present application, claims 1 and 5 having been canceled and replaced with new independent claims 11 and 12 and claims 3, 4 and 7-10 having been amended. Applicant notes with appreciation the Examiner's indication of allowable subject matter in claim 3, but respectfully submits that in view of the above amendments and the following remarks that all of the claims standing in this case are in condition for allowance. Accordingly, reconsideration and favorable action is respectfully requested.

In the Office Action, the Examiner has objected to claims 1 and 5 because of a number of informalities. As noted above, Applicant has canceled claims 1 and 5 and added new independent claims 11 and 12. The newly added independent claims 11 and 12 have been carefully drafted in order to avoid the technical deficiencies pointed out by the Examiner with respect to claims 1 and 5.

The Examiner has rejected claims 1, 3 and 4 under 35 U.S.C. 101 as being directed to non-statutory subject matter. In view of the above claim amendments, the Examiner's 101 rejection of the claims has been overcome. More particularly, newly added claim 11 (which replaced claim 1) and claim 3 (which has been rewritten in independent form) now more positively recite the technical elements performing the required functions.

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The Examiner has rejected claims 1, 3 and 4 under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement. Applicant respectfully traverses the Examiner's 112, first paragraph, rejection of the claims.

The Examiner alleges that although the present specification supports the terminology "users currently on line" it does not support the actual claim language of "users currently requiring access." Applicant respectfully disagrees. From a technical perspective any device currently on line is "requiring access" whatever the intentions of its human operator (the network still detects a machine that requires a connection to be maintained, even if the user has simply forgotten to turn it off). In the same way, a telephone exchange cannot distinguish between a genuine "call attempt" (in which a user deliberately takes the phone off-hook and dials a number) and an accidental activation by so-called "pocket dialing." Accordingly, claims 11 (which replaced claim 1), 3 and 4 fully comply with the written description requirement and, therefore, Applicant respectfully requests that the Examiner's 35 U.S.C. 112, first paragraph, rejection of the claims be withdrawn.

The Examiner has rejected claims 1, 4, and 9 under 35 U.S.C. 102(b) as being anticipated by Amalfitano; has rejected claims 5 and 10 as being obvious under 35 U.S.C. 103(a) over Amalfitano in view of Otis; and has rejected claims 7 and 8 as being obvious under 35 U.S.C. 103(a) over Amalfitano in view of Otis and further in view of

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Chuah. Applicant respectfully traverses the Examiner's 102 and 103 rejections of the claims.

As discussed in Applicant's previous response, the distinction between the present claims and Amalfitano is that the present claims require ranking users in order according to their usage, in contrast to Amalfitano allocating them to bands according to the actual amount of usage. In particular, note that Amalfitano prioritizes users according to whether they have exceeded a stated amount. See, Amalfitano at paragraph [0008]. In Amalfitano, the values p1, p2 are the proportion (actually percentage) of users at each level. It is clear from the fact that these values are not necessarily all the same (indeed some of them may be zero) that there may be different numbers of users in different categories (priority levels). Accordingly, by definition Amalfitano does not provide a ranking for the plurality of users relative to each other. Moreover, in Applicant's invention each user is at a different level and, therefore, all the values of p1, p2 etc would be the same – namely  $1/N$  where N is the number of users.

Thus, Amalfitano does not meet the claim language of independent claims 11 and 12 which require that "the plurality of users that currently require access to the resource [be ranked] relative to one another with the ranking being made according to the measurements of usage made by each member." Accordingly, independent claims 11 and 12 and their respective dependent claims patentably define over Amalfitano.

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Nor does Amalfitano teach (or even suggest) the limitation of claim 4 wherein “the restriction factor allocated to the user having made the least usage over the previous period is unity.” The Examiner’s citation to Amalfitano at paragraph [0056] has nothing to do with the limitation of present claim 4 in that it does not even refer to a restriction factor of unity for the user having made the least usage over the previous period. Accordingly, claim 4 patentably defines over Amalfitano for this additional reason.

Contrary to the Examiner’s assertion regarding claim 9, Amalfitano does not give each user a unique ranking. Although the use and demand pattern of each Amalfitano user is likely to be different, it does not follow that the rankings are necessarily unique. As noted above, Amalfitano clearly groups users with similar (not identical) usage records together. See, Amalfitano at paragraphs [0008] and [0009]. Accordingly, claim 9 patentably defines over Amalfitano for this additional reason.

Moreover, it should be clear that the secondary references to Otis and Chuah do not solve the deficiencies noted above with respect to Amalfitano. Accordingly, present claims 3, 4, and 7-12 patentably define over the cited art taken singly or in any combination.

Finally, the following illustrative example highlights the patentable distinctions between Applicant’s invention and Amalfitano. First, it should be noted that the present claims require each user to be ranked according to the measured usage relative to one

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another. The Examiner queries whether "relative to each other" relates to the ranking or to the measured usage. However, as the Examiner points out, ranking is necessarily a relative measure, so "ranking relative to each other" would be tautologous. This fact, and the word order in the present claims, indicate that it is the measured usage which is relative, as now more clearly required by the amended claims.

The claimed ranking depends only on the relative amount of usage by each user. Consider a set of users A, B, C, D, and E whose usage records are (in arbitrary units) 1, 2, 4, 8, and 16 units, respectively. In Amalfitano, two or more usage bands are defined – let us say 0-5, 5-10, 10-15, and 15+. So, in this example users A, B, and C would be in band 1 and would all get the same allocation. User D would be in band 2 and user E in band 4. Now, consider what happens if everyone doubles their usage. In Amalfitano, user C is now in band 2. Similarly, user D would move from Band 2 to Band 4 and his allocation would be reduced to the same as that for user E.

In Applicant's invention, however, the rankings would be 1st, 2nd, 3rd, 4th and 5th, respectively. As the rankings are defined only in relative terms, the rankings and therefore allocations would of course remain the same when everyone doubles their usage. Thus the ranking in Applicant's invention is independent of the quantity of usage – the person who uses least, however much that is, gets top ranking. Even if the lowest user quadruples his usage but remains the lightest user, he will still get top ranking.

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It would be possible for all users in Amalfitano to have usage measures in the same band, and thus achieve equal ranking. In Applicant's invention usage of each user is compared against each other's usage, not against an absolute value as in Amalfitano. So the statement that "the lightest user gets top ranking, regardless of how much he has used" is correct. The ranking in Applicant's invention is independent of the (quantified) actual amount used unlike the band sorting disclosed in Amalfitano. This example clearly demonstrates that the present claims patentably distinguish over Amalfitano.

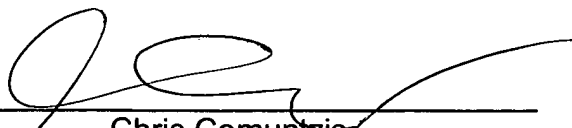
Therefore, in view of the amendments and remarks, it is respectfully requested that the application be reconsidered and that all of claims 3, 4 and 7-12, now standing in the application, be allowed and that the case be passed to issue. If there are any other issues remaining which the Examiner believes could be resolved through either a supplemental response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the local telephone exchange indicated below.

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Respectfully submitted,

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